MISCELLANY.

RECENT EXAMINATION FOR ADMISSION TO THE BAR AT RICHMOND, VIRGINIA.—At this examination there were forty questions asked, which are published entire in 6 Virginia Law Register, p. 717. There were thirty applicants, of whom only eleven were admitted—a trifle over one-third, which is certainly a small proportion to pass. The questions propounded on this examination were quite severe.

In Virginia the questions propounded are not private but public. This in our opinion is proper. If the questions are unreasonably hard, kept private, and a large proportion of the applicants are rejected, the bar will lay it to the ignorance of the class and not to the severity of the questions. On the contrary, if the questions are published and are unreasonably severe, and a large majority of the class fail to pass, it will be ascribed to the severity of the questions, and not to the ignorance of the class.—*Chicago Legal News.*

FALSE PRETENCES—ATHLETIC SPORTS—COMPETITOR IN HANDICAP—ATTEMPT TO OBTAIN PRIZE.—In *The Queen* v. *Button* (1900), 2 Q. B. 597, the defendant was indicted for attempting to obtain goods by false pretences. The facts were simple. Athletic sports were to be held at Lincoln, at which prizes were to be given to successful competitors. Among the contests were two races of 120 and 440 yards, in respect of each of which a prize of ten guineas was offered. Among the names sent in for these two contests was that of one Sims, and two written forms of entry were sent in to the secretary of the sports, containing a statement as to the last four races run by Sims, and also the statement that he had never won a race. These forms were proved not to have been written by the prisoner. Sims, as a fact, was a moderate performer, and he was given 11 yards handicap in the 120 yards race, and 33 yards in the 440 yards race. Sims was ill and did not appear, but the prisoner attended the sports and represented himself to be Sims. He was a fine performer and won both races easily. On being subsequently questioned by the handicapper, he declared his name was Sims, and that he had never previously won a race, both of which statements wer untrue. He was found guilty. It was contended on behalf of the prisoner that he could not be convicted, because the representations were made to secure a good handicap, and that the object of obtaining the prizes was too remote from the false representation. The Court for Crown Cases Reserved (Mathew, Lawrence, Wright, Kennedy and Darling, JJ.) held that the prisoner had been properly convicted, and that *Regina* v. *Larner*, 14 Cox C. C. 497, was not to be followed, it being opposed to the ruling of Lindley, J., in *Regina* v. *Dickinson* (1879), Times 26th July, of which the court approved.—*Canada Law Journal.*

THE TORRENS SYSTEM.—At the special session of the General Assembly of Virginia, recently adjourned, the following joint resolution was adopted:

"Whereas, the attention of the public is now being directed to matters of

fundamental importance in connection with the assembling of the constitutional convention, provided for by this legislature, among which matters the subject of reform in the land laws of the commonwealth is daily assuming more and more prominence; and

"Whereas, certain writings have been laid before this legislature by Eugene C. Massie, in which many of the defects of the registry system now prevailing in this commonwealth are set forth, and the advantages of what is known as the Torrens system of land registration and transfer are described; and

"Whereas, it is claimed that said Torrens system will confer material benefits upon every owner of real estate in the commonwealth, by clearing and registering titles and rendering the transfer of lands safe, speedy, and cheap; and

"Whereas, it is possible that some provision will be made in the new constitution for the adoption of the principles of said Torrens system in this commonwealth at such time and in such form as the legislature may hereafter determine to be wise and expedient;

"Resolved, by the House of Delegates (the Senate concurring), That Eugene C. Massie, Charles A. Graves, and W. W. Old, be requested to report to the next session of the General Assembly, a bill embodying the principles of said Torrens system with such comments and recommendations concerning its adoption as they may see fit to make.

"2. They shall serve without compensation, and the commonwealth shall be at no expense whatever by reason of their appointment and service."

The passage of this resolution, as shown on its face, was due to the zeal of the secretary of the State Bar Association, Eugene C. Massie, Esq., of the Richmond bar. Mr. Massie has made a careful study of the Torrens system, from an economical and practical, as well as from a legal, standpoint, and is thoroughly convinced of the wisdom of its adoption in Virginia. In our August number (6 Va. Law Reg. 215) we published a portion of a valuable paper by him on this subject, read before the State Bar Association at its last meeting. We hope to publish the remainder of the paper at an early day. The subject is one of great practical importance, and it is to be hoped is being carefully considered by those who aspire to membership in the forthcoming constitutional convention, or who propose to take active interest in its work.

GRANTEE'S ASSENT TO THE DELIVERY OF A DEED.—The much disputed question of the validity of a deed, made without the grantee's knowledge or assent, arose in a recent case. The owner of certain property deeded it to the plaintiff, in payment of a debt, and sent the deed to the recorder's office to be registered. Between the time of the delivery to the recorder and the delivery to the plaintiff, who had previously no knowledge of the deed, the defendant attached the land. The court held that, as a deed requires the grantee's actual assent, the attachment was levied before the deed took effect. *Knox* v. *Clark*, 62 Pac. Rep. 334 (Col.) In America, while many courts agree with the principal case, an equal number hold that assent will be presumed at least where the deed is beneficial, unless dissent is shown. *Welch* v. *Sackett*, 12 Wis. 243; *Mitchell* v. *Ryan*, 3 Ohio St. 377.

In early English law it seems that a deed passed title without assent on the grantee's part, just as now an heir or a remainderman necessarily takes title with-

out assent. *Butler and Baker's Case*, 3 Co. 26 b. The transaction was regarded as unilateral, and it is probable that a dissenting grantee had to divest himself of title by deed. As it was felt desirable, however, that a gift, which might involve liabilities, should not be forced on a man against his will, so that he might not only be put to the trouble of deeding it away, but could be held responsible for any liabilities which might accrue by reason of its possession, a right of disclaimer was recognized. The grantee was permitted, on hearing of the deed, to dissent to the gift, whereupon not only his title, but likewise any liabilities which might have accrued to him in the mean time, were at once divested. Although some of the later English cases, not carefully distinguishing between actual dissent, the exercise of the right to disclaim, and a lack of assent, where the right to disclaim still exists, have stated in loose terms that assent is necessary, but that it will be presumed where no actual dissent is shown, yet the doctrine of disclaimer is generally considered in England as the basis of the law. *Siggins* v. *Evans*, 5 E. & B. 367.

The American courts, in recognizing the inadvisability of forcing property on an unwilling grantee, have unfortunately adopted the erroneous view, suggested by some of the English cases, that assent is necessary. In other words, they have regarded the transaction as bilateral or contractual. Many have required an actual assent, but others, seeing that justice would be furthered by sustaining grants to insane persons, and to those under a legal disability—by whom actual assent is impossible—and such grants as that in the principal case, have recognized the fiction of presumed assent in all cases where no dissent is shown. In so doing they seem to have reached a more desirable result, although at the expense of an objectionable legal fiction, than those courts which insist on actual assent. Yet in one class of cases, if they carried out their doctrine logically, great injustice would result. Where property is granted in trust, and the trustee refuses to accept the trust, they would be compelled to hold that dissent being shown, no assent can be presumed, and that, therefore, as the legal title cannot be held to have ever vested, the trust is void. Considering, then, that to hold actual assent necessary results in injustice, and that to presume assent results in fictions and logical inconsistency, it would seem well to accept the English doctrine, already recognized by the Supreme Court of the United States in the case of trusts, that a conveyance passes title without the grantee's assent, but that the latter may disclaim, and thereby divest himself both of the legal title and of any liabilities which may have accrued to him through its possession. *Adams* v. *Adams*, 21 Wall. 185.—*Harvard Law Review.*

LANDLORD'S LIABILITY FOR CONDITION OF PREMISES—LANDLORD AND TENANT.—The following instructions were given by Judge E. C. Minor, of the Law and Equity Court of the City of Richmond, in a recent action, brought in that court, by the administrator of a child of a tenant against the landlord, for damages for the death of the tenant's child, alleged to have been caused by defective plumbing. The action was trespass on the case, and there was no contract between the plaintiff and defendant touching the condition or fitness of the premises.

The authorities upon which these instructions are based are printed below.

The point that the landlord is liable to the tenant, and to members of the latter's family, for the dangerous condition of the premises—and especially that he is bound to repair defective plumbing, even in the absence of contract or of knowledge on his part, if the defect existed at the time of the lease—is thought to be novel in this State. It is believed that the idea commonly prevails among the profession in Virginia that a landlord who has made no contract or representations as to the fitness of premises, and is ignorant of their dangerous condition, is under no liability to repair, and assumes no responsibility in case of their unfitness.

The instructions were these:

(1)

"If the jury believe from the evidence that A. S. Harvey became tenant of the premises in question from about December 1, 1899, and that at the time he took possession he had means and opportunities of informing himself as to the defects in the plumbing complained of, equally as great as those possessed by the defendants, and that the defendants had no knowledge of themselves or by their agents of said defects, then the jury must find for the defendants, unless the jury further believe from the evidence that after Harvey took possession of the premises he gave notice to the defendants or their agents of the said defects, and the said defendants failed to remedy said defects within a reasonable time after they or their agents were so informed, and that but for such failure the plaintiff's intestate would not have taken disease and died.

(2)

"The court instructs the jury that if they believe the plumbing was done prior to the year 1896, then it was not negligence which will render the defendants liable in this action that it was not constructed in accordance with the present city ordinances, unless the defendants had been ordered to do so by the proper authority, or unless they had been notified of its defective condition and then failed to have it done as the ordinance requires.

(3)

"The jury are instructed that if they believe from the evidence that the defendants were the owners of the property in the declaration mentioned, and that they having knowledge, actual or through their agents, of the unsanitary condition of the premises, due to defective plumbing and sewerage, existing at the time A. S. Harvey entered the premises to occupy said premises as tenant, joint-tenant, or sub-tenant, without letting him know the defects, and by reason of said defective plumbing and sewerage the plaintiff's intestate contracted the disease or diseases of which she died, then the jury shall find for the plaintiff.

(4)

"The court instructs the jury that the burden of proof is upon the plaintiff to show by a preponderance of evidence that the defendants were guilty of negligence as charged in the declaration, and that the sickness and subsequent death of the plaintiff's intestate was caused by the defective condition of the plumbing and sewerage on the premises, No. 2111 Broad street; and in determining as to whether the said defective plumbing and sewerage was the cause of the said sickness and death, they should consider the testimony given by the physicians, who testified as experts as to their opinions, touching the cause of death, and also the evidence given as to the location and topography of the premises.

(5)

"The jury is further instructed that there is no way of accurately measuring the value of a human life. If you find for the plaintiff, the question of how much damages should be allowed must rest largely in your discretion. In estimating the damages you may consider the reasonable expectation of the child's life, the pecuniary loss to her father, the deprivation of her attention and society, and add such further sum as you may think fair by way of solace and comfort, for the sorrow, suffering and mental anguish occasioned by the death of his said daughter."

The following authorities were relied upon by counsel for the plaintiff:

Taylor, Landlord & T., sec. 175; *Hamilton* v. *Feary* (Ind.), 52 Am. St. Rep. 485; *Willcox* v. *Hines* (Tenn.), 66 Am. St. Rep. 761, 41 L. R. A. 281, 34 L. R. A. 824; *Powers* v. *Harlow*, 53 Mich. 507, 51 Am. Rep. 154; *Bows* v. *Hunking*, 135 Mass. 384; *Daily* v. *Wise*, 132 N. Y. 311; *Willey* v. *Mullady*, 78 N. Y. 310, 34 Am. Rep. 536; *Cowen* v. *Sunderland*, 145 Mass. 363; *Bows* v. *Hunking*, 135 Mass. 380; *Cutter* v. *Hamlin*, 147 Mass. 471; *Godley* v. *Hagerty*, 20 Pa. St. 387, 59 Am. Dec. 731; *Baker* v. *Byrne*, 58 Barb. 438; *Scott* v. *Simons*, 54 N. H. 426; *Minor* v. *Sharon*, 112 Mass. 477; *Snyder* v. *Gordon*, 46 Hun, 538; *Kern* v. *Myll*, 80 Mich. 530; *Maywood* v. *Logan*, 78 Mich. 135; *Coke* v. *Gotkese*, 80 Ky. 598; *Timlin* v. *Standard Oil Co.*, 126 N. Y. 514; *Owings* v. *Jones*, 9 Md. 108; *Fish* v. *Dodge*, 4 Denio, 317; *Shidlebeck* v. *Moon*, 32 Ohio St. 264; leading article—61 Alb. L. J. 390.